

No. 05-77034

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

STANLEY WILLIAMS,

Petitioner,

v.

**S.W. ORNOSKI, Warden, San Quentin
State Prison, San Quentin, California,**

Respondent.

**SUPPLEMENTAL EXCERPTS OF RECORD
(VOLUME III OF III)**

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Amended Petition filed in
United States District Court,
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November 13, 1995

SER 366 - 462

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

12 STANLEY WILLIAMS,
13 Petitioner,

14 v.

15 DANIEL VASQUEZ, Warden of
California State Prison at San Quentin,
16 Respondent.
17

Case No. CV 89-0327-SVW

DEATH PENALTY CASE

**AMENDED PETITION FOR WRIT OF
HABEAS CORPUS BY A PERSON IN
STATE CUSTODY**

18
19 In accordance with this Court's "stay-abeyance" order of July 31, 1989 pursuant to Rule 26.8.7(e)
20 of the Local Rules of the United States District Court for the Central District of California and in
21 accordance with Rule 26.8.7(e) which provides that "[a]fter State Court proceedings have been
22 completed petitioner may amend the petition with respect to newly exhausted claims", petitioner through
23 his counsel files this amended petition for habeas corpus relief and alleges that his confinement, conviction
24 and death sentence violate federal constitutional principles and must therefore be vacated. Petitioner is
25 presently incarcerated at the California State Prison at San Quentin.
26
27
28

1 **I. PROCEDURAL AND JURISDICTIONAL ALLEGATIONS**

2 A. The court which entered the judgment of conviction and sentence under attack
3 is the Superior Court of the County of Los Angeles, State of California, Torrance Branch.

4 B. Petitioner was convicted on March 13, 1981 in People v. Stanley Williams,
5 Superior Court No. A-194636 of four counts of special circumstances first degree murder
6 and two counts of robbery. On April 15, 1981, the Los Angeles Superior Court entered a
7 judgment of death.
8

9 1. Petitioner was charged on May 3, 1979 by information with 4 counts of
10 first degree murder (Penal Code section 187) with 8 special circumstances alleged within
11 the meaning of Penal Code sections 190.2(a)(17) and 190.2 (a)(3); 3 counts of robbery
12 (California Penal Code section 211 P.C.) with the use of a firearm within the meaning of
13 California Penal Code sections 12022.5 and 1203.06(a); and kidnapping (California Penal
14 Code section 207).
15

16 2. Petitioner's arraignment was continued from May 3 to May 4, 1979, then
17 to May 11, 1979. On May 11, 1979, the Public Defender declared a conflict and on May
18 14, 1979 the court appointed new counsel for petitioner..
19

20 3. Petitioner pleaded not guilty and not guilty by reason of insanity to the
21 charges and denied the special circumstances and the other special allegations on May 14,
22 1979.

23 4. On June 1, 1979, counsel withdrew petitioner's not guilty by reason of
24 insanity plea.

25 5. On June 4, 1979, court-appointed psychiatrist Alfred Coodley, M.D.
26 reported to the court regarding petitioner's mental state. On June 11, 1979, court-
27 appointed psychiatrist Michael Coburn, M.D. reported to the court.
28

1 6. On January 21, 1980, petitioner's appointed counsel was relieved because
2 he previously represented a key government witness and new counsel was appointed.

3 7. On April 18, 1980 petitioner retained counsel who represented petitioner
4 from then until the entry of judgment in the trial court.

5 8. On January 21, 1981 petitioner's motion to declare the death penalty
6 unconstitutional was denied. On that same date, his motion for a separate jury for the
7 guilt and penalty phase was denied.

8 9. On January 21, 1981, jury selection commenced. Trial commenced
9 February 10, 1981.

10 10. On February 25, 1981, the court granted the People's motion to dismiss
11 the charges of kidnapping and robbery in Counts IV and V of the information.

12 11. On March 4, 1981, petitioner moved for a mistrial. The motion was
13 based upon a violation of the confidentiality requirement of California Penal Code section
14 987.9 in that confidential information regarding the request for a psychiatric examination
15 was provided to a Deputy Sheriff. Trial counsel stated that he could not call a defense
16 psychiatrist because of the breach of confidentiality. The motion was denied after a
17 hearing.

18 12. On March 11, 1981, the jury commenced deliberations in the guilt phase.
19 On March 13, 1981 the jury returned guilty verdicts as to the four murders and found each
20 to be in the first degree. The jury found the petitioner guilty of two robberies with use of
21 a firearm and found the special Circumstances true.

22 13. On March 17, 1981 the penalty phase commenced. No evidence was
23 presented. On March 18, 1981 the jury found that death should be imposed in connection
24 with each of the four murders. On April 15, 1981 the trial court so sentenced petitioner.

- 1 C. Petitioner's sentence is death.
- 2 D. The nature of the offenses is murder and robbery.
- 3 E. Petitioner had a trial by jury on his plea of not guilty.
- 4 F. Petitioner did not testify at either phase of trial.
- 5
- 6 G. Petitioner's appeal to the California Supreme Court was automatic. The
- 7 California Supreme Court affirmed petitioner's convictions and sentence on April 11, 1988,
- 8 in People v. Williams, 44 Cal.3d 1127 (1988). On May 26, 1988, the California Supreme
- 9 Court denied the Petition for Rehearing. The remittitur was issued to the Los Angeles
- 10 County Superior Court on May 26, 1988.
- 11
- 12 H. The grounds raised in the direct automatic appeal in the opening brief,
- 13 supplemental briefs and on rehearing were:
- 14 1. The state violated petitioner's Fifth and Sixth Amendment rights by the
- 15 introduction of the testimony of a Henry-Massiah police informant.
- 16 2. The introduction of evidence of an alleged escape plan and instructions
- 17 thereon violated petitioner's federal constitutional right to due process, to conviction upon
- 18 proof beyond a reasonable doubt, and a fair, accurate and reliable guilt and penalty
- 19 determination.
- 20
- 21 3. Petitioner was deprived of his rights to a fair and impartial jury, to
- 22 confrontation, cross-examination, the effective assistance of counsel and to a reliable
- 23 penalty determination based on reason, not passion and prejudice, by the jurors'
- 24 consideration of extraneous evidence.
- 25
- 26 4. Petitioner was deprived of the right to the effective assistance of counsel
- 27 by counsel's failure to seek exclusion of informant testimony and by counsel's failure to
- 28 investigate and present evidence of a mens rea defense.

1 5. The trial court violated petitioner's rights under the Eighth and
2 Fourteenth Amendments by failing to delete inapplicable penalty phase factors from the
3 standard jury instructions.

4 6. The trial court's modification of the standard flight instruction violated
5 petitioner's rights to proof beyond a reasonable doubt and to a reliable, accurate penalty
6 determination.

7 7. Petitioner was deprived of due process by the charging and submission of
8 multiple special circumstances arising out of a single course of conduct and indivisible
9 transaction.

10 8. The trial court violated the Eighth and Fourteenth Amendment by failing
11 to explain the circumstances under which the jury could consider sympathy during the
12 penalty phase.

13 9. The penalty phase jury instructions violated the Eighth and Fourteenth
14 Amendments by requiring the jury to return a death verdict even if it did not fully believe
15 the death penalty was appropriate.

16 10. The failure of the trial court and counsel to ensure the presentation of
17 mitigating evidence resulted in a death verdict obtained in violation of the Sixth, Eighth
18 and Fourteenth Amendment.

19 11. The monitoring of petitioner's conversations in jail and the state's receipt
20 of presumptively confidential motions violated petitioner's rights to the effective assistance
21 of counsel and to ancillary expert services, to privacy, to due process, to a fair trial and
22 compulsory process.

23 12. The statute under which petitioner was convicted violated due process
24 and the proscription against cruel and unusual punishment by failing to enumerate
25
26
27
28

1 aggravating factors, to exclude nonstatutory aggravation, to require written findings
2 concerning aggravation, to establish a burden of proof concerning the existence of
3 aggravating factors, to require juror unanimity regarding aggravating factors, to require
4 inter-case proportionality review, and to require proof beyond a reasonable doubt that the
5 death penalty is appropriate.
6

7 13. Petitioner's death sentence is disproportionate.

8 14. The trial court violated petitioner's Eighth and Fourteenth Amendment
9 rights to due process and to a reliable, accurate guilt determination by failing to instruct
10 the jury that the testimony of informants should be viewed with distrust and that such
11 testimony is inherently unreliable.
12

13 15. The trial court's failure to modify the standard jury instruction to make
14 clear that the aggravating factor of prior criminality referred to criminal activity other than
15 the crimes of which petitioner had been convicted during the guilt phase violated
16 petitioner's due process and Eighth Amendment rights to a fundamentally fair penalty
17 proceeding, and to a reliable, non-arbitrary, adequately guided sentencing process and
18 determination.
19

20 16. The trial court violated petitioner's constitutional rights to compulsory
21 process and to present mitigating evidence by its exclusion of evidence about the manner
22 in which petitioner's execution would be carried out.

23 17. The special circumstance findings by the jury were obtained in violation
24 of petitioner's right to a jury trial on every element of the offense and to a jury deter-
25 mination upon proof beyond a reasonable doubt of petitioner's mens rea at the time of the
26 offenses because the jury was not instructed and it did not find that petitioner must have
27 intended to kill the victims in order for the special circumstance to be found true.
28

1 18. The penalty phase instructions precluded the jury from fully considering
2 constitutionally appropriate mitigating factors and failed adequately to guide the jury's
3 discretion by failing to inform the jury to limit its consideration of aggravating factors to
4 statutorily-enumerated ones and to criminal activity proved beyond a reasonable doubt.

5
6 19. Retroactive application by the California Supreme Court of its decision
7 eliminating the element of intent to kill necessary to establish special circumstance liability
8 and death eligibility violated petitioner's due process right to be free of ex post facto
9 application of law.

10 I. Petitioner filed a Petition for Writ of Certiorari in the Supreme Court of the
11 United States on August 23, 1988, seeking review of the California Supreme Court's
12 affirmance of petitioner's conviction and sentence of death.

13
14 J. On October 31, 1988, the Los Angeles County Superior Court set petitioner's
15 date of execution for January 27, 1989. On November 16, 1988, the California Supreme
16 Court issued an order staying petitioner's execution pending final determination of a
17 petition for writ of certiorari in the United States Supreme Court. On November 28, 1988,
18 the petition for writ of certiorari was denied by the United States Supreme Court.

19
20 K. Petitioner filed two writ petitions seeking habeas corpus relief in state court
21 prior to commencing the present action. Petitioner filed the first petition on June 25,
22 1984, during the pendency of petitioner's automatic appeal. In re Stanley Williams,
23 California Supreme Court No. CR 23806. The writ was consolidated with the direct
24 appeal, and the court issued an order to show cause and ordered an evidentiary hearing,
25 which occurred from February 25 through March 1, 1985. Habeas corpus relief was denied
26 on April 11, 1988, at the time petitioner's death sentence and conviction were affirmed on
27 automatic appeal. The issues raised were:
28

1. Petitioner's Fifth and Sixth Amendment rights were violated by the state's use of an informant who elicited information from petitioner and testified at petitioner's trial to, inter alia, a purported confession, a death threat and an escape plan.

2. Petitioner was denied his constitutional right to the effective assistance of counsel when counsel failed to seek exclusion of the testimony of the jailhouse informant.

L. Petitioner's second petition for writ of habeas corpus was filed in state court on January 9, 1989, in the face of an imminent January 27, 1989 execution date.¹ In re Stanley Williams, California Supreme Court No. S008526. The California Supreme Court summarily denied this petition on January 18, 1989 without issuing a stay of execution or an order to show cause and without seeking an informal response from the state. The issues raised in this petition were:

1. Petitioner's death judgment violated his rights under the Fifth, Sixth, Eighth and Fourteenth Amendments because the jury was precluded prejudicially from considering relevant and readily available mitigating evidence.

2. Petitioner was deprived of his rights under the Fifth, Sixth, Eighth, and Fourteenth Amendments by the trial court's failure to investigate and present facts concerning petitioner's extensive drug history and psychological disorders as substantial evidence in mitigation of the punishment and as evidence supportive of a legal defense to the crimes.

3. Petitioner's Sixth, Eighth, and Fourteenth Amendment rights to notice, a full hearing, receipt of all potentially exculpatory evidence, a fair trial and accurate and

¹ The stay of this date issued by the California Supreme Court while petitioner's petition for writ of certiorari was pending in the United States Supreme Court automatically dissolved in mid-December, 1989, following the denial of the petition for certiorari and the expiration of the time within which to petition for rehearing. This left petitioner with an unstayed January, 1989 execution date.

1 reliable guilt and penalty determinations were violated by (1) the California Supreme
2 Court's use of a different standard for determining whether a key prosecution witness was
3 a government informant than the standard which existed at the time of petitioner's
4 evidentiary hearing and (2) systematic, but previously undisclosed abuses by law
5 enforcement agencies in Los Angeles concerning their contacts, placement, and use of
6 jailhouse informants.
7

8 4. Petitioner's Fifth, Sixth, Eighth, and Fourteenth Amendment rights to
9 adequate notice, to a fair trial, to present a defense, to the effective assistance of counsel,
10 to a reliable death-eligibility and penalty determination, to equal protection, to a non-
11 arbitrary imposition of punishment and to death-eligibility criteria that are not vague to the
12 jury or overbroad were violated by the statutory death-eligibility factors (the special
13 circumstances) which failed to put counsel on notice of a mens rea essential element and
14 by the subsequent change in law eliminating that requirement.
15

16 5. Petitioner's Fifth, Sixth, Eighth, and Fourteenth Amendment rights were
17 violated because the jury was permitted to consider and use during the penalty phase,
18 evidence of criminal conduct introduced during the guilt phase of which petitioner was
19 neither charged nor convicted.
20

21 M. On January 23, 1989, petitioner commenced the present action before this
22 Court by filing a petition for writ of habeas corpus pursuant to 28 U.S.C. §2254, and a
23 request for a stay of the January 27 execution date. This court granted the stay of
24 execution. On July 31, 1989, this Court issued a further stay of execution so that
25 petitioner could exhaust claims not fully exhausted in state court.
26

27 N. Pursuant to this directive, petitioner filed two additional writs for habeas
28 corpus relief in state court. Petitioner's third state habeas corpus petition was filed on

1 September 1, 1989. The California Supreme Court issued an order to show cause on
2 February 28, 1990 and ordered an evidentiary hearing on January 4, 1991 on the Henry-
3 Massiah claim only. On May 4, 1994, following that hearing and post-hearing briefing, the
4 California Supreme Court issued an opinion denying relief. See In re Stanley Williams,
5 7 Cal.4th 572 (1994). The issues raised in this petition were:
6

7 1. Petitioner's federal constitutional rights to compulsory process, present a
8 defense, a fair trial, and a reliable guilt and penalty determination were prejudicially
9 violated by the prosecutor's failure to disclose exculpatory evidence.

10 2. Petitioner's federal constitutional rights under the Fifth, Sixth, Eighth and
11 Fourteen Amendments were violated by the government's procurement of perjured
12 testimony.
13

14 3. Petitioner's rights to due process, to a fair trial, and to be free of cruel
15 and unusual punishment were violated because his conviction and death sentence were
16 obtained and affirmed based on false and perjurious testimony.

17 4. Petitioner's protections under United States v. Henry and United States v.
18 Massiah were violated by the presentation of the testimony of a government informant.
19

20 O. On April 15, 1994, while the above action was pending in state court,
21 petitioner filed another state habeas corpus petition, exhausting issues which became
22 apparent after return to state court. This petition was summarily denied on the merits and
23 for reasons of delay on June 21, 1995, after informal opposition by the state.² The issues
24 raised in this petition were:
25

26 1. Petitioner's constitutional rights were violated by the excessive security
27

28 ² The California Supreme Court rejected the state's motion to deny the writ petition on procedural grounds.

1 and by shackling petitioner without permissible justification or necessity or a hearing
2 thereon.

3 2. Petitioner's constitutional rights were violated by the prosecutor's race-
4 based exclusion of two African-American potential jurors and one potential alternate juror
5 and by his thinly-veiled appeal to racial prejudice during his closing argument at the
6 penalty phase of petitioner's trial.

7 3. Petitioner's constitutional rights were violated by the use against
8 petitioner of illegally coerced and involuntary testimony of a key prosecution witness.

9 4. Petitioner's constitutional rights were violated by the state's suppression of
10 material evidence, the state's presentation of false evidence, and the state's knowing failure
11 to correct false testimony at trial.

12 5. Petitioner's constitutional rights were violated because he was charged
13 and tried while mentally unable to rationally assist counsel and while he lacked a rational
14 understanding of the courtroom proceedings; while medicated; and after the court's failure,
15 when put on notice, to declare a doubt as to competence.

16 6. Petitioner's constitutional rights were violated by trial counsel's failure to
17 investigate and present a host of available, viable mens rea defenses, including insanity,
18 diminished capacity, and unconsciousness.

19 7. Petitioner's constitutional rights were violated in that the jury was
20 precluded from hearing substantial mitigating evidence relevant to California Penal Code
21 section 190.3 factors (a),(d),(h), and (k) as a result of counsel's failure to investigate and
22 present lay and expert mitigating evidence.

23 8. Petitioner's constitutional rights were violated as a result of the method
24 by which the jury was drawn in his case.

1 P. Each appeal or collateral relief action was commenced in the highest state
2 court having jurisdiction and therefore no further appeal is or was necessary to exhaust
3 state remedies. Except as noted above (oral argument on direct appeal, evidentiary
4 hearings on the first and third state habeas corpus petitions), petitioner has not had an
5 evidentiary hearing or any other type of hearing on the issues contained in the writ
6 petitions.
7

8 II. CLAIMS FOR RELIEF

9 A.

10 [Competency to Stand Trial Matters]

11 Petitioner's conviction and sentence are void, and his confinement is unlawful and
12 was obtained in violation of the Sixth, Eighth and Fourteenth Amendments to the United
13 States Constitution in that he was unable to and did not rationally assist counsel at any
14 time from his arrest through trial and lacked a rational understanding of the courtroom
15 proceedings from the time of his arraignment through trial. Trial of a mentally
16 incompetent person in a capital case violates not only his rights to due process, a fair trial,
17 and a reliable guilt and penalty verdict, but produces violations of a host of trial rights
18 protected by the constitution (to present a defense, to compulsory process, to
19 confrontation, to be present, to the effective assistance of counsel).
20

21 In addition, petitioner's procedural due process rights to a hearing should a doubt
22 exist as to mental competence, were violated by the attorneys who represented petitioner,
23 and by the judges before whom petitioner appeared during those times when his behavior
24 and demeanor suggested that he may have been unable to assist counsel rationally or
25 understand the proceedings.
26

27 The facts, among others to be developed after adequate funding, full discovery and
28 an evidentiary hearing, which support this claim are:

1 1. Petitioner appeared dazed and out of contact with reality at his
2 arraignment. He giggled throughout the hearing. The woman who had hired a lawyer to
3 represent petitioner at the arraignment tried unsuccessfully to tell the lawyer that
4 petitioner was mentally ill.
5

6 2. At the pretrial hearing on May 11, 1979 before Judge Fredricks,
7 petitioner was so unresponsive that the judge asked petitioner's step-father why petitioner
8 would not speak and whether he frequently behaved that way. Petitioner's stepfather
9 explained that ever since petitioner had been using PCP "he really been -- since then he
10 just haven't been on alert. He go into strange moods." The judge opined that petitioner
11 was alert and looking at him but that he "can't say he's understanding what I say."
12 Thereafter petitioner's step-father got petitioner to respond "unh-unh" to the judge's
13 questions.
14

15 3. Several people who visited petitioner in jail immediately after his arrest
16 reported that he was confused, bewildered, and did not know why he was in jail or even, at
17 times, where he was. His friend and former roommate, Jackie Watkins, graphically
18 described his demeanor as akin to someone who "had a hole in his mind."
19

20 4. He remained in this condition for virtually his whole stay in the county
21 jail. His mother visited him about two to three times a week throughout his jail stay and
22 found him to be so dazed that he did not recognize her or her husband Fred Holiwell. He
23 could not answer simple questions and frequently lost his train of thought when he was
24 able to talk.
25

26 5. His behavior was grossly incongruent to his situation. He giggled, was
27 silly, and acted like a child, who was unaware of his surroundings or situation. He had
28 difficulty putting coherent thoughts together and even those who knew him well could

1 barely understand him. He was childish and naive. A fellow inmate was shocked when he
2 read about petitioner's sentencing and discovered for the first time that petitioner had been
3 facing capital charges; his behavior was wholly inconsistent with someone facing the
4 ultimate penalty. Jail staff made fun of petitioner, bringing him cookies and milk to keep
5 him under control in exchange for which they asked him to flex his muscles for them.
6

7 6. Petitioner was under psychiatric care and medicated at times during his
8 jail confinement. Fellow inmate Joseph McFarland found petitioner's behavior on the tier
9 so odd that he described him as eerie. He simply assumed that petitioner's odd behavior
10 was the result of PCP and the effects of chronic use because when petitioner first got to
11 the jail, McFarland could smell PCP when petitioner exercised and perspired.
12

13 7. Petitioner's trial demeanor was consistent with his jail behavior. He was
14 largely unresponsive and reminded courtroom observers of a zombie or someone under the
15 influence of drugs.

16 8. Neuropsychological testing has revealed that petitioner suffered organic
17 brain damage, with the most pronounced deficits in the right temporal and parietal regions
18 and the frontal lobe of the brain. In addition during the several years preceding his arrest
19 through trial, petitioner displayed symptomatology consistent with a serious affective
20 mental disorder marked by long periods of depression and severe manic episodes during
21 the depressive phases. Stress substantially exacerbates the effects of petitioner's neuro-
22 cognitive deficits and his psychiatric illness. These effects include a lack of ability to
23 comprehend new material without repetition, distortion of information imparted to him,
24 the inability to readily and accurately pick up emotional and social cues, lack of concen-
25 tration on and interest in daily events, loss of contact with reality/psychosis, and severe
26 impairment in comprehending and assessing available options.
27
28

9. As a consequence of petitioner's severe depression, alternating with periods of mania, combined with his neurocognitive deficits, he was unable to assist counsel rationally, unable to participate in and make meaningful decisions concerning the proffering or withholding of evidence and defenses in his behalf, and unable to understand the proceedings with the requisite degree of understanding to make him competent to stand trial.

10. Petitioner is further informed and believes that inappropriate medication administered by the state without petitioner's permission and without his knowledge of the nature of the drug contributed to his mental incompetence at the trial.

11. The facts set forth in paragraphs D and Q herein are incorporated into this paragraph by this reference.

B.

[Shackling/Security]

Petitioner's conviction, sentence, and confinement are unlawful and violate his Sixth, Eighth, and Fourteenth Amendment rights to a fair trial, to be mentally present, to the effective assistance of counsel, the presumption of innocence, a reliable guilt and penalty verdict, and due process in that he was subjected to excessive security and shackling without permissible justification and necessity and in the absence of a hearing thereon. Together, the shackling and security seriously and prejudicially skewed both the guilt and penalty assessments in the state's favor.

The facts supporting this claim, among others to be presented after discovery, and access to this Court's subpoena power are as follows:

1. Petitioner's hands were shackled during the trial.
2. The restraining shackles were visible to both jurors and spectators in the courtroom.

3. In addition to the shackling, unusual security measures -- the obvious presence of more than the usual number of deputy sheriffs -- were employed during petitioner's trial.

4. Neither the shackling nor the additional security was reasonably necessary nor was it justified in an appropriate hearing at which petitioner was present.

5. Had such a hearing been held, it would have been readily apparent that petitioner represented no threat to the security of the courtroom: indeed he was described by those in the courtroom as a childlike, passive, dazed, confused and scared zombie, rather than as someone who had to be restrained. He was a compliant client, who was reactive rather than assertive and never posed any problems to trial counsel.

6. If the court believes that the primary responsibility for raising the matter rested with counsel, then counsel's inaction rendered his representation of petitioner in this regard constitutionally and prejudicially inadequate.

C.

**[Racial Animus in Jury Selection
and Prosecution]**

Petitioner's conviction, sentence, and confinement are unlawful and were obtained in violation of the Sixth, Eighth, and Fourteenth Amendment rights to a fair, impartial and representative jury, to a fair trial, to a reliable guilt and penalty assessment free of constitutionally impermissible considerations, and to the equal protection of the law because his prosecution -- from beginning to end -- was marred by improper racially-motivated tactics and actions by the state's attorney. Specifically, the trial began with the prosecutor's use of peremptory challenges to remove all African-American women from the jury and again against an African-American male potential alternate jury and ended with his thinly-veiled appeal to racial prejudice during the penalty phase of trial.

1 The facts supporting this claim, among others to be developed after discovery and
2 adequate funding, at an evidentiary hearing, are as follows:

3 1. Petitioner is an African American male. Three of the victims in the
4 charged homicides were Asian and one was Caucasian.

5 2. The prosecutor used two of his nineteen peremptory challenges to
6 remove the only two African-American females to be seated as prospective jurors. These
7 were prospective jurors Hayes and Johnson. He used one of three peremptory challenges
8 to remove William Coleman, an African-American male, from potential jury service as an
9 alternate juror in petitioner's case.
10

11 3. Although the full extent of the prosecutor's use of peremptory challenges
12 in other cases to remove minority jurors on the basis of their race or ethnicity is not
13 known, the California Court has twice found petitioner's prosecutor's exercise of
14 peremptory challenges to violate the race-neutral requirements of the law. See People v.
15 Turner, 42 Cal.3d 711 (1986) [prosecutor exercised three peremptory challenges against
16 three African-American prospective jurors in 1980 trial]; People v. Fuentes, 54 Cal.3d 707
17 (1991) [prosecutor exercised 10 of 13 peremptory challenges against African-American
18 prospective jurors and then 4 of 6 peremptory challenges against African-American
19 prospective alternate jurors].
20
21

22 4. Neither side presented any evidence at the penalty phase of petitioner's
23 trial. At the conclusion of his closing argument at the penalty phase the prosecutor told
24 the jury:
25

26 I'm going to close with an analogy. As I say, an analogy
27 sometimes takes up from the familiar to the unfamiliar. And if we
28 were to take a friend, a wife, a visitor from out of town down to
San Diego and perhaps go to Mission Bay and perhaps go to the
zoo; and if we went to the zoo, we might pass a place that had a
high fence and a moat; and in the background you would see,

1 sleepily, really, striped animals. mother, father, maybe some cubs
2 sunning themselves in the shade while we stood there perhaps
3 eating a candy bar or something, looking at them. And there's a
4 little brass plate, and it says, "Bengal Tiger." And you tell your
friends or your children that that's a Bengal Tiger, when, as a
matter of fact, it is not a Bengal Tiger.

5 Why do I say that? The same reason that all during this trial
6 you have seen the defendant, Stanley Williams, sitting there in his
7 suit, coming into court each day. We're seeing him in a sanitized
8 atmosphere in a courtroom, the judge with a jury, the spectators,
9 bailiff, defense attorneys prosecutor, all in suits and ties. Very
civilized proceeding.

10 And, so, if you were to take your wife and those same
11 children or a visitor out of town and go to India and there take a
12 trip into the back country, into the hinterlands; and you have a
13 pack on, and you're walking through palm trees and scrub brush;
and suddenly you push a large palm aside, and as you do so, you
see flashing bright eyes of a mother Bengal Tiger with her cubs.
Now, you are seeing a Bengal Tiger.

14 This is not San Diego Zoo. This is you in the habitat, in the
15 environment. And, by the same token, as we look at the evidence
16 from the 7-11, we look at the evidence from the Brookhaven
17 Motel, that as the defendant -- there's the defendant. There's the
defendant in his environment, with his shotgun, killing people
unnecessarily for a pittance of money.

18 5. The prosecutor made a similar argument in People v. Duncan, 53 Cal.3d
19 955 (1991), another capital case in which the defendant was also African-American:

20 You have friends come in from out of town. And so one of
21 the things you do with them, you take them to the San Diego Zoo.

22 And as you walk along with your friends, these high steel bars
23 and moats, you look back there, there are large striped animals
24 lolling in the sun, looking like kittens. And this little brass plaque
up here says, "Bengal Tiger."

25 And you tell your friends that that's a Bengal Tiger.

26 Wrong, wrong, wrong. That's a Bengal Tiger in captivity,
27 behind bars, and is being fed so much meat every day.

28 However, if you and your friends were on a houseboat in
Pakistan or India, and the boat comes up to the shoreline in the

1 evening, and you get off the boat, you're walking along; and you
2 push a big palm frond aside, and there you see a huge striped
3 animal with blazing eyes, with cubs, that's a Bengal Tiger. And
4 that's a Bengal Tiger in its natural habitat.

5 Mr. Cheroske wants to know why you have to cut up the
6 person that we have once know as Eileen DeBaun.

7 If you were there that night, you wouldn't see the defendant
8 in his suit, the way you have seen him in this trial. You would see
9 him with a butcher knife, out to get money. You would be seeing
10 him in a very natural habitat.

11 Consequently, the People submit that the evidence in this
12 case shows overwhelmingly that this defendant is responsible for
13 the murder of Eileen DeBaun.

14 6. The prosecutor's removal of African-American jurors and his closing
15 argument were motivated by intentional racial discrimination, prejudicial, and deprived
16 petitioner of a fair trial by an impartial, constitutionally drawn jury. No reasonable tactical
17 judgment accounted for counsel's omission. Trial counsel's failure to challenge the
18 prosecutor's actions rendered his representation of petitioner prejudicially inadequate in
19 this regard.³

20 D.

21 [Mens Rea Defense]

22 Petitioner's conviction, sentence, and confinement are unlawful and were
23 obtained in violation of his Sixth, Eighth, and Fourteenth Amendment rights to a reliable
24 and accurate guilt and penalty determination, to present a defense, to a fair trial, and to
25 the effective assistance of counsel in that evidence that petitioner lacked the requisite mens
26 rea for murder and robbery due to his serious mental disorder and/or drug-induced
27 psychosis or intoxication due primarily to the combined effects of his underlying organic

28 ³ See e.g., Virgin Islands v. Forte, 865 F.2d 59 (3rd Cir. 1989) (failure to make Batson
motion rendered counsel's assistance inadequate).

1 affective disorder and the chronic use of powerful mind altering drugs was neither inves-
2 tigated nor presented to the jury.

3 Counsel's failure to adequately investigate and/or present this evidence in support of
4 diminished capacity and unconsciousness defenses and his failure to enter a plea of not
5 guilty by reason of insanity and investigate and present evidence in support thereof violated
6 the Sixth and Fourteenth Amendments. Had counsel investigated and presented this
7 evidence petitioner would have been found not guilty by reason of insanity or found guilty
8 of lesser offenses. If the Court believes counsel was not ineffective, habeas corpus relief
9 must nonetheless be granted because the evidence set forth below undermines the entire
10 prosecution's case and must be considered as *newly discovered evidence*.
11
12

13 The facts, among others to be presented at an evidentiary hearing after adequate
14 funding and discovery, which support this claim are as follows:

15 1. At the time of petitioner's arrest and trial a defendant was considered not
16 guilty by reason of insanity if at the time of the criminal conduct, as a result of mental
17 disease or defect, he lacked the substantial capacity either to appreciate the wrongfulness
18 of his conduct or to conform his conduct to the requirements of the law. People v. Drew,
19 22 Cal.3d 333 (1978). At the time of petitioner's arrest and trial, a criminal defendant
20 could negate the mens rea element of any specific intent crime, as well as the intent to kill,
21 malice aforethought, premeditation, and deliberation in a murder prosecution if, as a result
22 of substantially reduced mental capacity -- whether caused by mental illness, mental defect,
23 intoxication or any other cause -- the defendant was unable to or did not form any of the
24 requisite mental states. People v. Poddar 10 Cal.3d 750, 757-758 (1974). At the time of
25 petitioner's arrest and trial, a criminal defendant could defend against a murder charge by
26 proving that as a result of mental illness, mental disease or mental defect that he was
27
28

1 unable to form the requisite mens rea, rendering his act the product of an irresistible
2 impulse. People v. Cantrell, 8 Cal.3d 672 (1973). Finally, a criminal defendant could raise
3 a defense of unconsciousness to a murder charge -- whether the unconsciousness was due
4 to voluntary intoxication or drug ingestion (partial defense) or due to involuntary ingestion
5 of intoxicants and/or mental illness (complete defense) -- at the time of petitioner's arrest
6 and trial. People v. Graham 71 Cal.2d 303, 316 (1969).

8 The unreasonable failure of counsel to investigate and present a defense based on
9 mental disorders, defects or illnesses and drug or alcohol intoxication constitutes a
10 violation of the constitutional right to the effective assistance of counsel and requires that
11 the conviction be set aside. In petitioner's case, each one of these defenses should have
12 been, but was not explored and presented. The failure to do so prejudicially violated
13 petitioner's constitutional rights.

15 2. As a result of neurocognitive deficits and organic brain injury, a severe
16 mood disorder or illness, and chronic substance abuse, petitioner lacked the substantial
17 capacity to conform his conduct to the requirements of the law and lacked the requisite
18 mens rea for the crimes charged.

20 3. Neuropsychological testing revealed that petitioner suffered damage to
21 several areas of the brain which control a variety of cognitive processes and behaviors
22 relevant to his culpability. His family and medical history suggests that the brain damage
23 may have been acquired, i.e., the cumulative product of a number of head injuries and
24 petitioner's intense inhalation of glue and other toxic solvents as a teenager, and exacer-
25 bated an underlying mental disorder.

27 4. The Halstead Reitan neuropsychological battery revealed petitioner
28 suffered mild generalized organic brain damage. That battery of testing does not, however,

1 reveal the full measure of brain dysfunction and additional tests revealed that petitioner
2 suffered right hemisphere (most likely right parietal and temporal lobe) damage and
3 frontal lobe damage, with serious orbitofrontal dysfunction. The testing also showed clear
4 indications of demyelination or damage to the tissue which covers the brain's neurons,
5 aids in neural transmission, and connects various regions of the brain.
6

7 5. The right hemisphere processes nonverbal contextual, social and
8 emotional cues. Damage to this area renders a person unable to perceive his environment
9 accurately, or to distinguish accurately among threatening and non-threatening factors in
10 the environment. Everything is potentially threatening, especially in less structured daily
11 setting. The nature of this brain damage causes petitioner to experience impaired
12 attention and concentration during periods of depression and causes him to disinhibit or be
13 unable to control his behavior under stress or during manic periods. Under stress or the
14 influence of drugs, or in an unstructured situation, he is likely, because of this damage, to
15 act impulsively.
16

17 6. The frontal lobe area is often seen as the "gas and brake" pedal of the
18 brain. It is responsible for planning, organization, reflection, deliberation, abstract
19 thinking, foreseeing and understanding consequences of one's actions and regulating
20 behavior. The orbitofrontal area connects the frontal lobes and limbic systems. It is
21 responsible for inhibiting behavior. Damage to it results in impulsive behavior. Damage
22 to the frontal lobes impairs petitioner's ability to premeditate, deliberate, form a plan, and
23 conform his conduct to the requirements of the law.
24

25 7. The myelin sheath, white matter fibers which connect different lobes of
26 the brain, assists in message transmission. The myelin sheath may be damaged with every
27 head injury as well as by glue and solvent inhalation. Damage to this area means, quite
28

1 literally, that the neurons "misfire" and messages do not get properly transmitted.

2 8. Petitioner's brain damage exacerbated an underlying psychiatric illness,
3 characterized by lengthy, severe periods of depression punctuated by alternating depressive
4 and manic periods. Petitioner's depression dated most probably from childhood.
5 Symptoms of depression include agoraphobia, sleep disturbance, anxiety, fearful or
6 brooding behavior, feelings of self-worthlessness, paranoia, distrustfulness and
7 discontinuation of previously pleasurable activities. Symptoms of mania include irritability,
8 emotional lability, grandiosity, euphoria, and severely impaired judgment. Mania and
9 manic behavior can, as in this case, shift into increasingly psychotic behavior and thinking.
10

11 9. Petitioner's friends described numerous instances of manic behavior,
12 including talking and laughing to himself, purportedly swimming in a pile of dirt, running
13 through the streets without clothes, abruptly stripping off his clothes in the park, picking
14 up a car, crawling through the house in the belief that someone was after him, suddenly
15 frantically spinning around and keeping people away, leaping out of a moving car, and
16 running down the street, clutching his throat and complaining of being unable to breathe.
17 In addition, the nature and extent of petitioner's extreme devotion to and obsession with
18 weight-lifting are consistent with mania.
19

20 10. Petitioner's friends and acquaintances also described numerous symptoms
21 of depression, including loss of appetite and loss of interest in weightlifting shortly before
22 the crime, lack of attention to hygiene, wondering aloud what he had done to deserve his
23 fate and why he did not have a job, and an inability or lack of desire to go outside the
24 house.
25

26 11. By all reports, petitioner's depression and mania deepened and the manic
27 behavior became floridly psychotic at times in the months and weeks immediately
28

1 preceding his arrest. Although his psychiatric disorder, alone or in combination with his
2 neurocognitive dysfunction would have been enough to substantially impair his ability to
3 conform and control his conduct and to severely impair his ability to premeditate,
4 deliberate, plan, and understand the consequences of his action, it was further exacerbated
5 and exaggerated by drug abuse.
6

7 12. The drugs used by petitioner all produce dissociative states and were
8 powerful mood-altering drugs. PCP can produce a state of mind akin to unconsciousness
9 and cause behavioral dyscontrol, while steroid use produces dramatic mood swings and
10 uncontrollable behavior. In addition, they disinhibited petitioner's behavior and his mania.
11 Many of the psychotic episodes are attributable, in part, to petitioner's drug abuse. Many
12 friends noted petitioner's escalating use of PCP in the months and weeks before the crime,
13 continuing up to and including the crimes themselves. Although more clandestine,
14 petitioner's use of steroids was also known to a couple of his close friends. The steroid use
15 acted synergistically with the PCP petitioner ingested, causing increased psychotic behavior.
16

17 13. A police report which counsel had well in advance of trial described
18 petitioner as a dusthead, i.e., a very heavy user of angel dust/PCP. In addition, official
19 court and probation records showing that (i) petitioner was arrested several years before
20 the present offense for being under the influence of PCP, an offense he admitted; (ii)
21 petitioner was a frequent user of PCP; (iii) a substantial portion of petitioner's income
22 came from buying and selling PCP were readily available to counsel and would have put
23 reasonably competent counsel on notice of the potential mens rea defenses.
24

25 14. Medical records of Metropolitan State Hospital indicated that petitioner
26 was institutionalized following an incident which occurred while he worked as a counsellor
27 in a boys' home during which petitioner ran naked from the home into the street, striking
28

1 fellow workers, shouting and threatening to kill people. When picked up by the police he
2 was violent and combative but later could not remember what happened. The final
3 hospital diagnosis was psychosis with drug or poison intoxication. These records, which
4 were readily available to trial counsel, would have put reasonably competent counsel on
5 notice of the potential available mens rea defenses.
6

7 15. The neurocognitive deficits and psychiatric presentation described herein
8 existed in 1979. Petitioner's drug use was renown and heavy at the time of the crimes. His
9 behavior was consistent with one suffering from a severe mental disorder, complicated by
10 neurocognitive dysfunction and exacerbated by serious drug abuse. Literally dozens of lay
11 witnesses were available to testify about petitioner's mental disorders, brain dysfunction
12 and drug abuse.
13

14 16. The facts set forth in paragraphs A and Q are incorporated herein by this
15 reference..
16

17 17. One of petitioner's first trial lawyers obtained the assistance of two
18 psychiatrists. Had trial counsel investigated petitioner's drug and mental health history and
19 supplied that history to those experts, they would have recommended neuropsychological
20 testing and would have urged counsel to explore mens rea defenses to the crime. Each
21 expert opined at the time of trial that he needed additional information and one opined
22 that petitioner's capacity may have been impaired. The doctor who had the most extended
23 clinical interview with petitioner would have supported a mens rea defense. Trial counsel's
24 unreasonable failure to consult further with these experts and to conduct a reasonably
25 competent investigation deprived petitioner of meritorious mens rea defenses and of expert
26 opinion in support thereof.
27

28 18. All of the information presented herein was or would have been readily

1 available to trial counsel exercising reasonable diligence on petitioner's behalf. The
2 witnesses who knew about petitioner's mental health history, manic and increasingly
3 psychotic behavior, and drug abuse were all in Los Angeles or readily available at the time
4 of petitioner's trial. The neuropsychological testing and psychiatric evaluations of
5 petitioner rested on tests and clinical evaluation techniques that were routinely performed
6 by reasonably competent mental health professionals at the time of petitioner's trial.
7

8 19. Had petitioner's school and institutional records and the anecdotal
9 information about petitioner's behavior in the days, weeks, months and years before the
10 crime been presented to an appropriate expert, he or she would have advised counsel and
11 later testified that petitioner had valid mens rea defenses of insanity, diminished capacity,
12 and unconsciousness as set forth above.
13

14 20. Had the information set forth above and in the declarations in In re
15 Stanley Williams, California Supreme Court No. SO39285 been presented to the jury in
16 petitioner's case, the jury would not have rendered the verdicts it rendered because it
17 would have concluded that valid mens rea defenses existed, and would therefore have
18 returned a *not guilty by reason of insanity* verdict or verdicts on lesser included offenses.
19

20 E.

21 [Involuntary, Coerced Witness Statement]

22 Petitioner's conviction, sentence, and confinement are unlawful and were obtained
23 in violation of the Sixth, Eighth, and Fourteenth Amendment rights to a fair trial, a
24 reliable guilt and penalty determination and due process of law by the admission at trial
25 against petitioner of the illegally coerced and involuntary testimony of a key prosecution
26 witness, which resulted in a fundamentally unfair trial. The facts, among others to be
27 developed at an evidentiary hearing, after discovery and adequate funding, supporting this
28 claim are as follows:

1 1. Petitioner and Samuel Coleman were stopped (allegedly for speeding)
2 and arrested by law enforcement while travelling in Mr. Coleman's car in the late hours of
3 March 14, 1979, or early morning hours of March 15, 1979.

4 2. Samuel Coleman had never previously been arrested. He and petitioner
5 were ordered out of Mr. Coleman's car, thrown spread eagle against the car, and
6 handcuffed. When Mr. Coleman could not produce identification in the form of a driver's
7 license, he was allegedly told he would be arrested for a vehicle code violation. A search
8 of Mr. Coleman's trunk revealed a properly licensed and registered shotgun. The officers
9 found shotgun shells in the glove compartment.

10 3. Mr. Coleman and petitioner were arrested and taken to the police station
11 because the patrolling officers allegedly suspected the car was stolen, although Mr.
12 Coleman provided the officers with his name, which matched the officer's follow-up
13 Department of Motor Vehicles check via radio communications. Petitioner was arrested
14 for violations of Penal Code sections 211 and 487.3, purportedly because he knew the
15 shotgun was in the trunk, and because petitioner and Mr. Coleman purportedly gave
16 conflicting statements on how long they knew each other.

17 4. Upon arrival at the jail, Mr. Coleman was thrown into a cell, beaten,
18 called a nigger and eventually lost consciousness. When he came to, he was laying in a
19 pool of blood.

20 5. Mr. Coleman was hurt, scared and moaning in pain. Petitioner tried to
21 calm him.

22 6. Some time later, Mr. Coleman was taken to the infirmary for medical
23 treatment. Subsequently, he was taken into an interrogation room, accused of committing
24 murder, and fearing for his life, told the officers what they wanted to hear about

1 petitioner. Mr. Coleman was never advised he had a right to counsel.

2 7. Thereafter, prior to Mr. Coleman's making bail on the theft/robbery
3 charges, someone connected to the Office of the District Attorney came to see him and
4 promised him immunity in exchange for his testimony against petitioner.
5

6 8. Fearing further physical abuse, Mr. Coleman agreed to the immunity.
7 When he was released from jail, he learned from his doctor that his ribs had been broken.

8 9. Prior to petitioner's trial, but after the preliminary hearing, Mr. Coleman
9 was arrested on an unrelated drug charge and threatened with jail if he decided not to
10 testify.
11

12 10. Mr. Coleman provided the initial interview to the deputies because he
13 had been beaten and feared additional physical harm. His continued cooperation and trial
14 testimony was the product of the same fear.

15 11. Immunity did not alter Mr. Coleman's perception that he faced chronic,
16 continual police harassment on the street if he did not testify in conformity with his earlier
17 coercively obtained testimony.
18

19 12. The physical assault on Mr. Coleman rendered his statement unreliable.
20 The continued fear and threat of harassment ensured that his trial testimony would be the
21 same. His testimony was coerced, unreliable, illegally obtained and admitted in violation
22 of petitioner's fundamental due process right to a fair trial.

23 13. The admission of Mr. Coleman's testimony was prejudicial. Nearly all of
24 the prosecution's witnesses who had first-hand knowledge of the crime or of alleged
25 admissions by petitioner were presented and known to the jury as accomplices, jail
26 confinees, or career criminals. Samuel Coleman was one of the exceptions. His testimony
27 was used by the state as crucial proof that petitioner committed the Brookhaven Motel
28

1 crimes and as crucial corroboration for the testimony of criminal James Garrett, who as
2 discussed immediately below, was inadequately impeached as a result of the state's
3 unconstitutional conduct. The testimony the jury asked to rehear during deliberations was
4 that of Mr. Coleman and of James and Esther Garrett. Plainly, petitioner's liability for
5 capital murder, in the jury's eyes, rested on this testimony.
6

7 F.

8 [Suppression/Misconduct]

9 Petitioner's conviction, sentence and confinement are unlawful and were obtained in
10 violation of the Sixth, Eighth, and Fourteenth Amendments to the United States
11 Constitution and the state constitutional analogues in that the state suppressed material
12 evidence and knowingly permitted false evidence to be admitted and go uncorrected at
13 petitioner's trial, which in turn violated petitioner's rights to confrontation, fair trial,
14 effective assistance of counsel, and present a defense. In addition, the presentation of
15 false evidence, whether or not knowing, in this case violated California Penal Code section
16 1473 and the federal and state constitutions.
17

18 The facts, among others to be presented at an evidentiary hearing and after full
19 discovery and adequate funding, which support this claim are as follows:

20 1. James Garrett testified at petitioner's trial to a number of alleged
21 admissions by petitioner. He specifically testified that he was not promised and was not
22 expecting any benefits in exchange for his testimony against petitioner. He acknowledged
23 that he expected to receive breaks on other pending cases as a result of his assistance to
24 law enforcement in other matters, not petitioner's capital prosecution.
25

26 2. At the time James Garrett reported the alleged admissions by petitioner
27 to law enforcement in March, 1979, he had pending against him a number of criminal
28 charges. He was also under investigation in another matter. On the first matter, he was

1 arrested on March 3, 1978, and subsequently charged with three counts of receiving stolen
2 property (a Mark V Continental, a truck with 245 cases of wine, and 57 handguns) on
3 three separate occasions. See, People v. James and Esther Garrett, Los Angeles County
4 Superior Court No. A342090. In the other matter, after Garrett's partner in an insurance
5 fraud scam was mysteriously killed, Garrett was under investigation for extortion and was
6 arrested for the same before petitioner's preliminary hearing in April, 1979. He was
7 charged in June, 1979 in a two count information with extortion and compounding a
8 felony. People v. James Garrett and Perry L. Hicks, Los Angeles Superior Court No.
9 A344683.
10

11
12 3. In the first matter, Garrett pled guilty on January 14, 1980, to one count
13 of receiving stolen property. In the second matter, he pled guilty on October 24, 1979, to
14 one count of compounding a felony.

15 4. Jury selection began in petitioner's case in January, 1981. The jury
16 returned a death verdict on March 18, 1981, and the judge denied petitioner's new trial
17 motion and imposed the judgment of death on April 15, 1981.

18 5. On May 8, 1981, James Garrett was sentenced to four years probation
19 with no jail time for the criminal conduct resulting in the conviction for compounding a
20 felony. On September 9, 1981, James Garrett was sentenced to four years probation with
21 no jail time for the receiving stolen property conviction. In each case, petitioner is
22 informed and believes that the deputy probation officer recommended a state prison
23 sentence.
24

25 6. Judge Gadbois began the September, 1981 sentencing hearing in the
26 receiving stolen property case by announcing that he was "wearing [his] good robe, since
27 we are now disposing of one of the oldest cases in the County of Los Angeles." He
28

1 rejected the state prison recommendation because of "a plea bargaining that evolved during
2 the progress of this case that prevents me from doing that, even if I wanted to." The judge
3 then explained that he had a long conversation with prosecutor Robert Martin:

4 THE COURT: And that conversation was about a half hour in
5 length, and he described in some considerable detail what you had
6 done. I don't want to repeat it here, because it might even be
7 harmful to you, and I don't want that to happen, so suffice it to
8 say that on the basis of that conversation and the other things that
9 I know about you, I'm very easy about the plea bargain that
restricted you to County time in this case, and I then look at it and
say, well, what are we going to do for the public if I send you to
County Jail for a year.

10 7. Robert Martin prosecuted petitioner. He was not the deputy district
11 attorney who prosecuted James Garrett on the receiving stolen property matter, nor the
12 deputy attorney general who prosecuted James Garrett on the matter involving the
13 extortion/compounding a felony charges.

14 8. At petitioner's trial, James Garrett testified that he was not receiving any
15 benefits for providing statements and testifying against petitioner; that he was promised
16 leniency for his wife Esther in exchange for his assistance on the extortion case and
17 matters leading up to it;⁴ and "a chance" as far as his pending cases if he cooperated with
18 them in the insurance fraud investigation.

19 9. In fact, it is evident that James Garrett received probation in each of his
20 cases at least in part in exchange for his testimony against petitioner. Sentencing in each
21 case occurred years after Garrett's crimes and pleas, but only approximately three weeks
22 (extortion case) and less than five months (receiving stolen property) after petitioner's

23
24
25
26
27 ⁴ The extortion case grew out of a complicated insurance fraud ring, whereby James
28 Garrett and others staged approximately 125 freeway accidents and "sold" the accidents to
specified doctors and lawyers who represented the victims in their claims to the insurance
companies and then returned part of the "take" to Garrett and others.

1 judgment of death. Petitioner's prosecutor, not the prosecutors involved in either of
2 Garrett's cases, went to bat for Garrett, and the judge in the receiving case acknowledged a
3 bargain and a half-hour conversation with petitioner's prosecutor.
4

5 10. At no time during trial did the prosecutor correct James Garrett's trial
6 testimony. He has never done so since. The testimony was materially false and misleading
7 and invaluable impeachment evidence was thereby lost to petitioner.

8 11. The suppression was prejudicial. By the state's own pretrial admission,
9 made in an internal office memorandum, James Garrett was "the main witness against
10 defendant Williams on the motel murders and testified fully at the preliminary hearing
11 about conversations with Williams as to how the crimes were committed." The state
12 recognized the weaknesses in its case against petitioner for the robbery-homicide of the
13 convenience store clerk, noting in the same memorandum that corroboration of the
14 accomplices was "thin but should prove sufficient." Under these circumstances, the jury's
15 evaluation of the credibility of every witness, but especially James Garrett was crucial. The
16 jury asked to have James Garrett's testimony (along with that of Mrs. Garrett and Mr.
17 Coleman) reread during deliberations. No true evaluation can occur without the full
18 extent of the biases and motivations of the witnesses. Especially in light of the police
19 misconduct in extracting Samuel Coleman's testimony, this additional misconduct cannot be
20 held harmless.
21
22

23 G.

24 [Government Informant/Admissibility of Testimony]

25 Petitioner was denied his Sixth, Eighth and Fourteenth Amendment rights to
26 counsel by the admission of the testimony of governmental agent informer George Oglesby
27 regarding petitioner's "admissions" and "confession" made in jail after petitioner was
28 charged and was awaiting trial, including purported statements about a planned escape to

1 be executed with Oglesby, a confession to murdering numerous Asians (3 victims of the
2 charged murders were Asian), the "acting out" of the charged murders, and the preparation
3 of notes threatening to kill cooperating witnesses against him. The State successfully hid
4 Oglesby's status as an informant and failed to disclose evidence generally about the
5 practices of law enforcement concerning its "agents." The failure to preclude this
6 unconstitutional evidence substantially prejudiced petitioner.
7

8 The following facts, among others to be presented after full investigation and
9 discovery, support this claim:

10 1. Those facts set forth in paragraphs H, I, J and K are incorporated herein
11 by this reference.
12

13 2. Oglesby acted as an informant for the investigating Police Lieutenant
14 Fitzgerald ("Fitzgerald") starting in 1977 and maintained regular contacts with Fitzgerald
15 thereafter. Further, Fitzgerald gave him money from time to time. Oglesby had been an
16 informant in five other cases for the Sheriff's Department, and had testified in other cases
17 prior to petitioner's arrest in the hope that by testifying he would be treated favorably.
18

19 3. Oglesby visited Fitzgerald's office to see him every six to eight weeks and
20 called him perhaps five or six times a month. Fitzgerald maintained contact with Oglesby
21 strictly for business purposes.

22 4. Contemporaneous with his frequent contact with Fitzgerald, Oglesby
23 worked as an informer for the United States Department of Treasury, Division of Alcohol,
24 Tobacco & Firearms ("ATF"). His work as a paid informer led to the issuance of
25 thirty-five criminal warrants at ATF's request. In fact, Oglesby's work for ATF continued
26 until the night of his arrest and incarceration in the Los Angeles County Jail for special
27 circumstances murder.
28

1 5. Oglesby himself was arrested for special circumstances murder on
2 February 21, 1979, a month before petitioner was arrested. Fitzgerald initiated a "special
3 handling" request for Oglesby at the County Jail. This arrest precipitated a multitude of
4 contacts between Oglesby and Fitzgerald and Fitzgerald's colleague, Sergeant John
5 Allender ("Allender"). The day after Oglesby's murder arrest Fitzgerald, unannounced,
6 visited Oglesby in the Jail. Fitzgerald contacted Oglesby at the Los Angeles County Jail at
7 least eighteen times between May 21, 1979 and April 21, 1981.

9 6. Oglesby was told that if something "came up" regarding the murder with
10 which petitioner was charged or the escape, he should contact either Fitzgerald or
11 Allender.

12 7. Fitzgerald asked Oglesby to "continue talking," said "I am interested," and
13 prompted Oglesby to provide more about what he heard from petitioner.

14 8. After petitioner's arrest, Oglesby had perhaps twenty separate meetings
15 with Fitzgerald. On approximately ten occasions Fitzgerald and Oglesby met without
16 anybody else present. In addition, Oglesby recalled meeting with Allender at least half a
17 dozen times, some of those times with Allender alone.

18 9. During 1979, while incarcerated at the Los Angeles County Jail, he also
19 provided information regarding five other inmates. Additionally, while incarcerated
20 Oglesby met with a Burbank police investigator and two Deputy District Attorneys to
21 provide information about crimes of others.

22 10. During 1979 Oglesby received cash or cigarettes on at least seven
23 occasions from Fitzgerald or Allender. Fitzgerald offered Oglesby money during most of
24 his visits to Oglesby. Oglesby received cash payments on April 27 and May 15, 1979.

25 11. Oglesby was under specific written direction to obtain information. A
26
27
28

1 book from Oglesby contained a note from a deputy sheriff in it that said, "I would like to
2 know what's going on in the tier. Hookers, dope and anybody that is talking."

3 12. Oglesby suggested that Dana Couch, his wife, could contact Fitzgerald to
4 help in his investigation of petitioner. In fact, Dana Couch did contact Fitzgerald, met
5 with Allender twice and even attempted to meet with a friend of petitioner While wearing
6 a "body wire."
7

8 13. Beginning in March 1977, Sheriff's Deputy Barret Fitzgerald began a
9 relationship with Oglesby. Fitzgerald initially contacted Oglesby to determine whether
10 Oglesby had information regarding a murder which Fitzgerald was investigating. From
11 March 1977 to the end of that year, Fitzgerald had at least a half dozen personal meetings
12 with Oglesby regarding that murder. In one of those contacts, Oglesby claimed that the
13 suspect in the murder had confessed to him by telephone. When revealing that confession,
14 Oglesby also informed Fitzgerald that Oglesby was working as an informant for the
15 Alcohol, Tobacco and Firearms division of the federal government. Fitzgerald's 1979
16 datebook reflects that Fitzgerald had the names and telephone numbers of Oglesby's
17 contact within ATF.
18

19 14. Fitzgerald commenced payment to Oglesby contemporaneous with his
20 claim that the murder suspect had confessed to him and such payments would continue
21 throughout the period of time of the trial.
22

23 15. Oglesby acted as Fitzgerald's informant on several other cases during
24 1977 and 1978. In one such case, Oglesby informed Fitzgerald that notorious prison
25 informant Leslie White, "foster son" of Oglesby contrived a plan to escape from County
26 Jail with Oglesby's participation. At Fitzgerald's direction, Oglesby was instructed by
27 Fitzgerald to deceive White in a tape recorded telephone call to convince White that
28

1 Oglesby would assist in an escape plan thereby creating an opportunity to incriminate
2 White. Fitzgerald was aware at the time of this contact with White that White was
3 incarcerated and awaiting trial on a crime.
4

5 16. Oglesby provided information to Fitzgerald regarding a stolen weapon
6 and Fitzgerald initiated contact with Oglesby in order to solicit information from Oglesby
7 regarding a murder in Little Tujunga Canyon. In addition, the Los Angeles County Jail
8 booking slip documenting Oglesby's 1977 misdemeanor arrest contained a notation that
9 Oglesby had called Fitzgerald's number at the Sheriff's Homicide Division.
10

11 17. Fitzgerald testified that from 1977 through 1978, Oglesby stopped by his
12 office to speak with Fitzgerald on an average of every six to eight weeks. In addition,
13 Fitzgerald admitted that Oglesby may have called him at his office as many as five or six
14 times a month and that Fitzgerald had taken Oglesby out and paid for meals prior to
15 Oglesby's 1979 arrest on suspicion of first degree murder.
16

17 18. After Oglesby's arrest on February 21, 1979, Fitzgerald engaged in a
18 series of telephone conversations with Oglesby including a confession by Oglesby that
19 Oglesby believed he was guilty of second degree murder and possibly manslaughter.
20 Oglesby repeatedly asked Fitzgerald to assist him in connection with his case. Even though
21 Oglesby confessed during these conversations, Fitzgerald deviated from his practice of over
22 25 years and did not make any written record of the confession nor a written report
23 regarding the incriminating statements. Fitzgerald's first post arrest meeting with Oglesby
24 lasted between 30 and 45 minutes according to Fitzgerald. Oglesby testified the meeting
25 occurred on February 22, 1979 and was one of approximately 20 meetings during that year.
26 Oglesby repeated his request that Fitzgerald read the reports of the Sheriff's Department
27 and the Coroner's Report. Fitzgerald claimed that he told Oglesby he would not assist
28

1 him.

2 19. Fitzgerald's second post arrest meeting with Oglesby followed Fitzgerald's
3 receipt of another phone call from Oglesby in which Oglesby said he had something
4 important to tell him. Rather than decline to speak with Oglesby, Fitzgerald went to the
5 jail on the same day to meet with Oglesby. This meeting with Oglesby lasted 90 minutes
6 and, again, Fitzgerald and Oglesby were alone. Oglesby told Fitzgerald that he had
7 information about an escape plan in which two Deputy Sheriffs were going to be killed and
8 asked to have something done in Oglesby's case in return for the information. Oglesby
9 said he had information in his cell and agreed with Fitzgerald to meet the following day to
10 produce the evidence.
11

12 20. Fitzgerald met with Oglesby the following day and there, according to
13 Fitzgerald, received two or three pieces of paper including the diagram of the Courthouse
14 that Oglesby claimed he had obtained from petitioner Stanley Williams. Fitzgerald
15 admitted, however, that he learned of the Williams investigation from his ex-partner Jack
16 Fueglein, before this meeting with Oglesby in which the documents were allegedly
17 provided.
18

19 21. On May 22, 1979, Fitzgerald delegated the investigation of the escape to
20 Deputy Sheriff John Allender. Allender had already been involved in the investigation of
21 one of the murders with which Williams was charged. Fitzgerald said that he wished to
22 eliminate his further personal involvement in the investigation. Notwithstanding this
23 desire, Fitzgerald continued to meet with Oglesby outside the presence of Allender.
24 Fitzgerald personally traveled to the jail to meet with Oglesby on June 8, 1979 and August
25 6, 1979.
26

27 22. Fitzgerald's 1979 datebook reflects that he continued to make entries
28

1 regarding the Williams homicide after Allender was assigned to the case and after
2 Fitzgerald purportedly had nothing else to do with the case. Fitzgerald falsely testified that
3 he made entries using the homicide number because there was no number for the escape
4 file. In fact, Fitzgerald made separate entries using the escape investigation file number
5 well before the notations referencing the murder investigation number.
6

7 23. Fitzgerald acknowledged all the information he received from Oglesby
8 pertaining to Williams was related to the prosecutor handling the William murder case and
9 that it was conveyed to the prosecutor for use in either an escape case or the murder case.
10

11 24. After denial, Fitzgerald eventually admitted that he had provided money
12 and other compensation to Oglesby for information delivered during previous investi-
13 gations. In addition, Fitzgerald paid Oglesby for information in other matters including
14 the Williams case. Fitzgerald further admitted that he told Oglesby what Fitzgerald could
15 do for him at one or more of the personal meetings he had with Oglesby at the jail.
16

17 25. Fitzgerald admitted that he had contacted Oglesby's prosecutor and the
18 probation investigator in order to assist Oglesby because he wanted Oglesby to have some
19 consideration for his sentencing. Fitzgerald admitted that he wrote a letter to Oglesby's
20 parole investigator requesting favorable treatment as a payback for favors Oglesby had
21 done and cases which he had "worked on."
22

23 26. Deputy Joe Reid worked at Los Angeles County Jail and knew Oglesby
24 during his period of incarceration. Reid and Oglesby spoke on an average of once a week
25 and estimated that he spoke with Oglesby over 100 times during the two years Oglesby was
26 in the County Jail.
27

28 27. Reid understood that Oglesby was passing information he gathered within
the jail to Deputy Fitzgerald. On some occasions, Oglesby informed Reid that he needed

1 to talk to Fitzgerald because Oglesby had information. In addition, he delivered envelopes
2 that Fitzgerald had left for Oglesby. Reid also observed Fitzgerald personally delivering
3 envelopes to Oglesby while meeting with Oglesby in Deputy Reid's office at the Los
4 Angeles County Jail.

5
6 28. It was commonly known in the jail between 1979 and 1981 that Oglesby
7 was acting as an informant. Reid was aware that Oglesby had provided information to
8 other officers on a number of cases including homicide and child molestation cases. In
9 addition, Deputy Reid arranged a meeting between Oglesby and a deputy district attorney
10 so that Oglesby could relay information.

11
12 29. Sheriff's Deputy John Allender testified to meeting George Oglesby on
13 May 23, 1979. Prior to the meeting he had received documents from Fitzgerald which
14 Fitzgerald reported he had obtained from Oglesby the previous day. At the conclusion of
15 the meeting among Allender, Fitzgerald and Oglesby, Allender did not recall either
16 Allender or Fitzgerald giving any instructions to Oglesby at the conclusion of the meeting.
17 Indeed, Allender admitted that he told Oglesby that he would be in touch with him.

18
19 30. Allender gave Oglesby his telephone number so Oglesby could contact
20 him in the future if he obtained additional information. Allender testified that he would
21 be happy to have such information. After the May 23, 1979 meeting, Oglesby delivered
22 additional notes to Allender, one of which was a note which contained the statement
23 "Blacky's a heartbeat away." This note was received by Allender on June 21, 1979, long
24 after Oglesby first met with Allender and Fitzgerald.

25
26 31. Allender compensated Oglesby with gifts including cigarettes, hamburgers
27 and malted milks. Allender kept a ledger documenting cash payments to Oglesby
28 throughout the course of the Williams investigation and remembers expending money in

1 connection with that investigation only by payments to Oglesby. The ledger of payments
2 reflects that all payments were made in exchange for "information."

3 32. Fitzgerald learned of Oglesby's arrest through homicide division detectives
4 Sturm and Hamilton. Both Sturm and Hamilton were also investigating officers in the
5 Williams murder case. Sturm and Hamilton informed Fitzgerald of Oglesby's arrest
6 because they knew Oglesby had a relationship with Fitzgerald. On the day of Oglesby's
7 arrest, Fitzgerald contacted the inmate reception center of the County Jail and made a
8 "special handling request" on behalf of Oglesby. Fitzgerald claimed that he had contacted
9 the County Jail to inform them that Oglesby was an informant and could provide a history
10 for Oglesby. The special handling request, however, contains no such information.
11 Fitzgerald understood that informants generally were housed in a separate part of the jail
12 called the "snitch tank" and that Oglesby was being housed in "high power." Fitzgerald
13 made no effort to get Oglesby out of high power and into protective housing designed for
14 informants until after Oglesby had produced all the evidence pertaining to Williams.
15

16 33. Deputy Reid testified regarding the handling of inmates for whom special
17 handling requests had been made. Deputy Reid said that if Fitzgerald had actually made
18 known to the inmate reception center that Oglesby had testified in a Mexican mafia prison
19 gang case, that would have been placed on the special handling card. Deputy Reid,
20 despite over 100 contacts with Oglesby during the two years of incarceration and numerous
21 meetings with Lieutenant Fitzgerald, never learned of Oglesby's participation in the
22 Mexican mafia prison gang case. Deputy Reid confirms that Oglesby, who was housed in
23 module 1700 on A row would have been expected to be placed in module 3300 or the
24 "snitch tank." Oglesby was housed with inmates described as "highly dangerous" or "high
25 escape risks." Oglesby testified at the original evidentiary hearing that the "Blackys a
26
27
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